

REMARKS**Pending Claims**

Claims 1-20, 23, 26-29, 46, 48 and 56-57 are pending in this application. Claims 21-22, 24-25, 30-45, 47 and 49-55 have been canceled (see Request for Filing a Patent Application under 37 CFR 1.53(b) at paragraph 3; submitted with patent application on November 5, 2001). Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

Restriction Requirement

In the Restriction Requirement, the Examiner requested Applicants to elect one of the inventions of 13 groups. Please note that previously canceled claims 21-22, 24-25, 30-45, 47 and 49-55 were included in the Restriction Requirement as members of Groups IV, V, VIII, IX, X, XI, XII and XIII. In Group IV, only claim 11 is still pending while the remaining claims in this Group (31, 32, 34, 37, 38 and 40-43) were previously canceled in the transmittal form submitted with the patent application upon filing. In Group V, only claims 14-16, 28, 29, 46 and 48 are pending while the remaining claims in this Group (47 and 49-55) were previously canceled in the transmittal form submitted with the patent application upon filing. Therefore, the Groups containing pending claims are the following:

Group I (claims 1, 2, 17, 18 and 56) drawn to an isolated polypeptide, classified in class 530, subclass 350.

Group II (claims 3-7, 9, 10, 12, 13 and 57) drawn to an isolated polynucleotide and method of use, classified in class 435, subclass 69.1.

Group III (claim 8) drawn to a transgenic organism, classified in class 800, subclass 2.

Group IV (claim 11) drawn to an antibody that binds to a putative receptor polypeptide, classified in class 530, subclass 388.22.

Group V (claims 14-16, 28, 29, 46 and 48) drawn to a method of nucleic acid analysis and apparatus for such, classified in class 435, subclass 6.

Group VI (claim 19) drawn to a method of treatment by administering a putative receptor polypeptide, classified in class 514, subclass 2.

Group VII (claims 20, 23, 26 and 27) drawn to a biospecific binding assay, classified in class 436, subclass 501.

Applicants hereby elect, with traverse, to prosecute the claims of Group I, which includes and is drawn to claims 1, 2, 17, 18 and 56. Applicants reserve the right to prosecute the subject matter of non-elected claims in subsequent divisional applications.

Applicants suggest that Group II (claims 3-7, 9, 10, 12, 13 and 57) drawn to an isolated polynucleotide and method of use, and Group IV (claim 11) drawn to an antibody that binds to a putative receptor polypeptide, could be examined at the same time as the polypeptides of Group I (claims 1, 2, 17, 18 and 56) without undue burden on the Examiner, as a search of the prior art to determine the novelty of the polypeptides would substantially overlap with the previously conducted searches of claims directed to the polynucleotides and with a search of antibodies which specifically bind to the polypeptides. Applicants respectfully submit that there is minimal additional burden on the Examiner to examine those claims in addition to the claims elected in the present application, particularly in view of the additional burden on Applicants to file, prosecute and maintain yet another application in this family, and respectfully request that the Examiner consider doing so.

Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

Additionally, the method claims of Group V (claims 14-16, 28, 29, 46 and 48), Group VI (claim 19) and Group VII (claims 20, 23, 26 and 27) are entitled to rejoinder upon allowance of any product claim per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of a product claim, for rejoinder of process claims covering the same scope of products. See also M.P.E.P. 821.04 as follows.

Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. . . . The claims to the nonelected invention will be withdrawn from further consideration under 37 C.F.R. 1.142. . . . However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Thus, Applicants request reconsideration and withdrawal of the Restriction Requirement and examination of the entirety of Applicants' claims.

CONCLUSION

In light of the above remarks, Applicants submit that the present application is fully in condition for allowance. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned at the number listed below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**.

Respectfully submitted,

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